

HOUSE BILL REPORT

ESHB 2363

As Amended by the Senate

Title: An act relating to protecting victims of domestic violence and harassment.

Brief Description: Protecting victims of domestic violence and harassment.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Kenney, Orwall, Darneille, Ryu, Roberts, Appleton, Dickerson, Ladenburg, Reykdal, Jinkins, Santos and Kagi).

Brief History:

Committee Activity:

Judiciary: 1/26/12, 1/30/12 [DPS].

Floor Activity:

Passed House: 2/9/12, 97-0.

Senate Amended.

Passed Senate: 2/29/12, 48-0.

Brief Summary of Engrossed Substitute Bill

- Modifies existing laws and adds new sections concerning domestic violence and antiharassment criminal no-contact orders and civil protection orders, confidentiality in court proceedings when domestic violence is involved, and confidentiality and immunity standards for domestic violence fatality review panels.
- Orders a study to assess domestic violence perpetrator treatment and recidivism by domestic violence offenders.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Omeara Harrington (786-7136).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Confidentiality in Court Proceedings Involving Domestic Violence.

Address Confidentiality Program.

The address confidentiality program allows people meeting certain criteria to apply to the Secretary of State for a separate address to be designated to serve as the person's public address in order to keep his or her actual address confidential. An address can be designated for people who have a good reason to believe that they are a victim of domestic violence, sexual assault, trafficking, or stalking, and are in fear for their safety. People may apply on their own behalf or on behalf of a minor or incapacitated person who meets these criteria. An address can also be designated for applicants who are targets for threats or harassment because of their involvement in the criminal justice system.

A court order for disclosure of address confidentiality program participant information may only be issued upon a probable cause that release is necessary for a criminal investigation or to prevent immediate risk to a minor.

Family Law Proceedings.

In cases involving domestic violence or child abuse, if residential time is ordered, the court may order the exchange to occur in a protected setting. In extreme cases, the court may order the use of supervised visitation and safe exchange centers. If a parent who is seeking to relocate a child is an address confidentiality program participant, the notice of intended relocation need not contain protected information.

Criminal No-Contact and Civil Protection Orders.

There are several kinds of orders available to limit respondents' contact with victims. No-contact orders are commonly issued as part of criminal proceedings, and civil protection orders are available regardless of whether a criminal case is pending. Generally, violation of a protection order or no-contact order is a gross misdemeanor. With some orders, if the restrained person has two prior convictions for violations or the violation involves Reckless Endangerment or Assault, violation is a class C felony.

Domestic Violence.

Civil domestic violence protection orders are available to those who have suffered physical harm, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking by a family or household member. In addition to restraining further acts of domestic violence, the order can prohibit the perpetrator from contacting the victim or knowingly coming within a specified distance of a location.

Additionally, no-contact orders can be issued in criminal cases involving domestic violence. They may be issued before, after, or concurrently with civil protection orders. No-contact orders automatically expire at arraignment (unless extended or reissued), upon dismissal or acquittal, or upon termination of the sentence or elimination of that condition of the sentence. These orders can also be entered telephonically and reduced to writing soon thereafter if there is no outstanding restraining or protective order already in place.

Harassment.

Civil antiharassment protection orders are available to those who have been seriously alarmed, annoyed, or harassed, by a course of conduct which serves no legitimate or lawful purpose. The petitioner does not need to establish that they had any sort of special relationship with the respondent. In order to prevent irreparable injury, the court may issue an ex parte temporary antiharassment order that will last for a fixed period not to exceed 14 days, or 24 days if the court has permitted service by publication. Upon a hearing, the court may order a civil antiharassment protection order. These orders last for one year unless the court deems that it is likely that the harassment will resume when the order expires, in which case the order may last for a fixed time longer than one year or be permanent. Willful violation of an antiharassment protection order is a gross misdemeanor.

No-contact orders in criminal proceedings for harassment can be ordered in much the same way as domestic violence no-contact orders. An intentional violation of such a court order is a misdemeanor. Willful violation of a harassment-based post-conviction no-contact order is also a misdemeanor.

Confidentiality Standards for Domestic Violence Fatality Review Panels.

The Domestic Violence Fatality Review (DVFR) was formed in 1997, and began reviewing domestic violence fatality cases in 1998. In 2000 the Legislature established the fatality review process in statute. The Department of Social and Health Services (DSHS) contracts with the Washington State Coalition Against Domestic Violence to coordinate the review of domestic violence fatalities.

Oral and written communication and documents shared within or produced by a regional domestic violence fatality review panel are confidential and not subject to disclosure or discovery by a third party. The representatives of a regional domestic violence fatality review are immune from civil liability for any activity related to reviews of particular fatalities as a result of good faith actions within established parameters and protocols.

As of 2011, in addition to the existing authority to convene regional domestic violence fatality review panels, the DVFR is authorized to convene statewide issue-specific review panels, gather information for use in those panels, and to provide training and technical assistance to the issue-specific panels.

Domestic Violence Perpetrator Treatment.

Washington law provides that a court may order a defendant (or respondent) to participate in a domestic violence perpetrator treatment program when he or she is convicted of a domestic violence offense or is found to have committed domestic violence for the purposes of a domestic violence protection order. State law provides minimum requirements for the goals and curriculum of domestic violence treatment programs and directs the DSHS to adopt rules for the certification and regulation of individual programs. Certified domestic violence perpetrator treatment programs are provided by private organizations.

Summary of Engrossed Substitute Bill:

Confidentiality in Court Proceedings Involving Domestic Violence.

Non-disclosure of Victim Location Information in Dissolution Proceedings.

In dissolution proceedings involving domestic violence or child abuse, the court is prohibited from requiring a victim of domestic violence or the custodial parent of a victim of child abuse to disclose to the other party information that would reasonably be expected to enable the perpetrator to obtain previously undisclosed information about the victim's residence, employer, or school. An exception is made for cases in which the court finds that disclosure is necessary to protect the health or safety of a minor child.

Confidentiality of Domestic Violence Program Information.

No court or administrative body is permitted to compel a person to disclose the name or address of a domestic violence program unless the court finds that there is clear and convincing evidence that failure to disclose such information would be likely to result in an imminent risk of serious bodily harm or death. If the domestic violence program is a party to the proceeding, then the court may require disclosure if the court deems it necessary and the information to be disclosed is relevant to the facts of the case. In either situation, the discovery request must be made in a pretrial motion accompanied by an affidavit detailing the need for the information. The court may order disclosure after an in camera review, but must order that there is no further dissemination and must seal the records containing the information.

Obtaining access to and releasing confidential information about the location of a domestic violence program is punishable by a civil infraction carrying a maximum \$500 fine. Current or former program participants are not subject to the infraction. Willful and malicious release of confidential location information regarding the location of a domestic violence program is a gross misdemeanor.

Address Confidentiality Program and Family Law Proceedings.

Family courts must comply with the requirements of the address confidentiality program in the course of all proceedings.

Antiharassment Protection Orders and No-Contact Orders.

A defendant arrested for violating any civil antiharassment protection order must appear in person within one judicial day of arrest, at which time the court will determine the necessity of imposing a no-contact order or conditions on pretrial release. A defendant who is charged by citation, complaint, or information and not arrested must appear in court for arraignment within 14 days.

An out of custody defendant who is subject to a no-contact order pursuant to a pending criminal charge for harassment violates court ordered restrictions on contact with the victim if the violation is "willful" rather than "intentional."

The penalty for violation of a no-contact order pursuant to final disposition of a harassment case is raised from a misdemeanor to a gross misdemeanor.

Domestic Violence No-Contact Orders.

A no-contact order pursuant to a criminal case involving domestic violence may be issued or extended even when the defendant fails to appear at arraignment as long as the court finds probable cause.

No-contact orders that are issued prior to charging and expire at arraignment, or within 72 hours in absence of charging, can no longer qualify for exemption from entry into the criminal intelligence information system.

Domestic Violence Fatality Review Panels.

Statewide review panels are subject to the same confidentiality standards and are allowed the same immunity as regional review panels.

Washington State Institute of Public Policy Study.

The Washington State Institute of Public Policy shall conduct a study to assess recidivism by domestic violence offenders and assess domestic violence perpetrator treatment. The study provision becomes null and void in the event that funding is not appropriated.

EFFECT OF SENATE AMENDMENT(S):

The Senate made changes to the provisions on disclosure of victim information and domestic violence program location information.

1. With respect to the disclosure of information in dissolution proceedings that would reasonably be expected to enable a perpetrator of domestic violence or child abuse to obtain information about the name, location, or address of a victim's residence, employer, or school:
 - a. The court's prohibition from requiring a victim to disclose such information to the other party is limited to initial hearings and to cases where the court has made a finding of domestic violence or child abuse. The court must carefully weigh the safety interests of the victim before issuing orders that would require disclosure in a future hearing.
 - b. In cases where domestic violence or child abuse is alleged but the court has not yet made a finding, the court must give the alleging party the opportunity to prove the allegations before ordering the disclosure.
2. With respect to the disclosure of domestic violence program location information in civil, criminal, or administrative proceedings:
 - a. A court may not compel a person or domestic violence program to disclose a domestic violence program's location information unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice, rather than unless failure to disclose would likely result in an imminent risk of serious bodily harm or death. In considering whether disclosure is necessary, the court must first consider the safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the

- parties' interests. The domestic violence program must be provided notice of the request for disclosure and an opportunity to respond.
- b. The provisions requiring a written pretrial motion and in camera review before the court can compel the disclosure of information is removed.
 - c. The provision creating a civil infraction for releasing confidential information about the location of a domestic violence program is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, section 11 of this act is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is the next in a series of bills from our domestic violence work group, which brings together stakeholders from many areas and disciplines. This is a step forward in protecting victims of domestic abuse and reducing the harm they face.

The confidential case type for confidential name change petitions is necessary because, as of right now, the dockets for these cases are still publicly accessible. All clerks file confidential name change petitions differently because the language in the current statute is ambiguous. Clarifying this in the law would make petitioners safer; however, if we have to give notice to perpetrators that purpose will be overturned. Regardless of a name change, a parent still has an obligation to comply with residential time with other parent. Additionally, there is a misunderstanding of the prevalence of the use of this measure. The victims that are using this have had to cross state lines and hide because they are in fear for their lives. They have to be willing to lose all of their work and educational credentials and all of their contacts. They are not people hiding to get back at someone.

Victims who accidentally reveal the location of a domestic violence program should not be prosecuted or fined, and inadvertent disclosures should not be penalized. However, for cases where people are intentionally disclosing this information, there should be consequences.

Domestic violence survivors continually report that their safety concerns are not being taken seriously by the family court system. Courts have forced disclosures that undo all of the efforts that have been made to keep these people safe. It does not make sense to provide funding for programs that protect domestic violence survivors and then allow the family court system to make rulings that force people to give up the safety they have worked so hard to achieve.

Reissuing no-contact orders takes what is already occurring in the civil process and allows it to occur in the criminal process, which is an important step for safety. Also, the due process concerns are addressed. A standard of probable cause must be met before the order is reissued, and this mirrors what we do in civil practice when ex parte orders are entered without notice. When it is someone other than the victim bringing a no-contact order, there is language requiring that there are efforts to make sure the victim is notified.

The fatality review panel protections are important. When review panels come together their communications should be protected.

The study is a good idea. It is not enough to merely punish offenders of domestic violence; we have to invest in efforts to change their behavior. Domestic violence treatment is a very common response and we need more information about what is the most effective and helpful way to intervene in these very serious cases. We hope victims will be safer when we send a batterer to treatment, but there is a question as to whether that is true. Further study is needed to know if that kind of treatment is appropriate. Domestic violence perpetrator treatment is just one sliver, and judicial accountability as well as supervision by the Department of Corrections are important aspects as well.

Typically, domestic violence perpetrator treatment is a one-year program. It can be very expensive and difficult to find funding. This creates a huge hurdle in compliance. Studying the effectiveness of these programs and finding ways for people to pay for treatment is important so that people can follow through with it.

(Opposed) The confidential name change process proposed in this bill is open to abuse. Domestic violence orders often get entered as a result of marital spats, and for all sorts of other reasons. There are no rules of evidence that apply in those hearings. All it takes is for someone to be in fear for someone else to be labeled a domestic violence perpetrator. The problem is that the victim can now go to any county with their domestic violence order and seek a name change for themselves or for their children, and have a file with restricted access. Because there is no notice to the respondent, a victim can use a domestic violence protection order as a way to change her or her child's name based on her testimony alone. Then the other parent has no chance of seeing their children because they do not know what their child's name is.

Confidential name change with a confidential case type is a proper procedure in some cases, but the vast majority of domestic violence cases are not criminal and are not so serious that you would want to change the name such that the father cannot find his child. A better system would be to have a hearing with notice in the appropriate county. At that point the court can determine whether the petitioner qualifies to have a confidential name change in the first place. Then the respondent can show up to the hearing and testify. If the court determines there is a danger, then it can authorize a confidential name change. The father will have a chance to know where the child is and testify in his own defense.

Allowing for reissuance of a no-contact order when a case is no longer pending is problematic. Defendants are entitled to notice and an opportunity to be heard. These are cases that could have been resolved years ago and are suddenly brought back into court. Furthermore, under this bill any person could bring a no-contact order, not just the victim. There are serious constitutional concerns with letting a non-party bring such a request.

There may be a problem in changing the law that says pre-charge no-contact orders do not need to be entered into a criminal information system. A pre-charge protection order may not have a case number, so law enforcement may not be able to comply with this. This could be creating a liability for law enforcement.

Persons Testifying: (In support) Representative Goodman, prime sponsor; David Martin, Washington Association of Prosecuting Attorneys; Grace Huang, Washington State Coalition Against Domestic Violence; Chelle Hunsinger, Eastside Domestic Violence Program; and Ruth Gordon, Washington State Association of Court Clerks.

(Opposed) Rick Bartholomew, Washington State Bar Association, Family Law; Erin Curtis, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Robert Brett, Dads Divorced by Their Wives.

Persons Signed In To Testify But Not Testifying: None.